



Comptroller General
of the United States

Washington, D.C. 20548

148078
S. Riback

Decision

Matter of: C.J.M. Contractors, Inc.

File: B-250493.2

Date: November 24, 1992

Todd W. Heck, Esq., Basile, Testa & Testa, for the protester.

Joel R. Feidelman, Esq., and Anne B. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for C. Pyramid Enterprises, Inc., an interested party.

John A. Dodds, Esq., Department of the Air Force, for the agency.

Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid that omitted standard form 1442, "Solicitation, Offer and Award," which contains several material provisions (such as a minimum bid acceptance period), was properly rejected as nonresponsive where the bid did not otherwise evidence bidder's intent to be bound by form's material provisions.

DECISION

C.J.M. Contractors, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F28609-92-B-A037, issued by the Department of the Air Force for the repair of storm drains at McGuire Air Force Base. C.J.M. argues that the agency improperly found its bid nonresponsive for failing to include a standard form (SF) 1442, "Solicitation, Offer and Award."

We dismiss the protest.

Bids were originally due under the IFB no later than 11 a.m. on September 11, 1992. On September 4, the Air Force issued an amendment making certain changes to the IFB and extending the bid opening date to September 17. On September 11, C.J.M.'s representative attempted to deliver a bid package to the Air Force which included an executed SF 1442. The record shows that the Air Force apparently did not accept C.J.M.'s bid on that date, and further informed the firm that an amendment had been issued which, among other things, extended the deadline for the submission of bids. Thereafter, on the revised bid opening date, C.J.M. tendered a bid package to the Air Force. This bid did not include an

SF 1442, and the Air Force ultimately rejected the firm's bid as nonresponsive because of this omission.

C.J.M. argues that the Air Force's rejection of its bid for failing to include the SF 1442 was improper. According to the protester, by tendering a properly executed SF 1442 on the original bid opening date, it "constructively" delivered the form to the Air Force and unequivocally demonstrated its intent to be bound by its terms. C.J.M. therefore maintains that its bid was responsive. C.J.M. also argues that it did not receive the SF 30, "Amendment of Solicitation, Modification of Contract," with its copy of the amendment. According to C.J.M., this created confusion on its part regarding whether an SF 1442 was required with its bid submission.

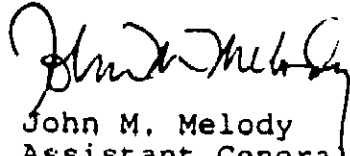
The protest is without merit. The SF 1442 contains several material terms, including the minimum period of time during which the government may accept the tendered bid; a bid which does not unequivocally remain open for the specified minimum period (by inclusion of an executed SF 1442 or some other explicit written expression in the bid materials) is nonresponsive and must be rejected. Oxbow Enters., B-244696, Oct. 1, 1991, 91-2 CPD ¶ 275. C.J.M. concedes that the bid package it ultimately tendered did not contain a properly executed SF 1442, and there is nothing else in the firm's bid that otherwise showed agreement to the minimum bid acceptance period (or other material terms of the SF 1442). Thus, C.J.M.'s bid as submitted was nonresponsive.

The fact that C.J.M. previously attempted to deliver its bid with an SF 1442 allegedly included does not change our conclusion. There is no principal permitting the constructive delivery of bidding materials. Where a bid is not physically in the agency's possession by the bid opening time, it can be considered for award only under very limited circumstances. See Federal Acquisition Regulation § 14.304. In this case, the agency was not in possession of a responsive bid from C.J.M. at bid opening, that is, one including an SF 1442. C.J.M. thus was not eligible for award. See generally, The University of Kansas, B-222329, Apr. 15, 1986, 86-1 CPD ¶ 369.

C.J.M.'s argument that it was misled into not submitting the SF 1442 by the omission of the SF 30 from its copy of the amendment is unpersuasive. We fail to see, and C.J.M. does not explain, how the absence of one standard form reasonably could cause confusion over the necessity for a different form. As noted above, the SF 1442 contains a number of material terms and conditions not found elsewhere in the solicitation package and not superseded by the terms of the SF 30 or other provisions of the amendment. We conclude

that the agency properly rejected C.J.M.'s bid as nonresponsive.

The protest is dismissed.

A handwritten signature in dark ink, appearing to read "John M. Melody". The signature is fluid and cursive, with the first name "John" being more prominent.

John M. Melody
Assistant General Counsel